

Final Order Denying Refund: 01-20181357
Income Tax
For the Year 2016

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this written ruling.

HOLDING

Individual failed to establish that she abandoned her Indiana domicile. Refund claim was properly denied by the Department.

ISSUES

I. Income Tax–Domicile.

Authority: IC § 6-1.1-12-37; IC § 6-3-1-12; *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988); *Schmidt v. Indiana Dept. of State Revenue*, 81 N.E.3d 705 (Ind. Tax Ct. 2017); [45 IAC 3.1-1-22](#); [50 IAC 24-2-5](#).

Taxpayer protests the denial of a refund claim.

STATEMENT OF FACTS

Taxpayer, an individual, filed a Claim for Refund (GA-110L form) with the Indiana Department of Revenue ("Department") for the tax year 2016. The Department denied the claimed refund in a letter dated April 27, 2018. Taxpayer then filed a protest with the Department, noting on her "Protest Submission Form" that she wanted a "[f]inal determination without a hearing." The Department reviewed Taxpayer's protest and this Final Order Denying Refund results. Further facts will be supplied as necessary.

I. Income Tax–Domicile.

DISCUSSION

Taxpayer states on her refund claim form that she "changed residency to FI [Florida] in 2015 but IDOR held her 2016 refund for taxes paid in by her former employer." Taxpayer's accountant also stated in a letter that Taxpayer "received a reduced refund for tax year 2016 (Form IT-40PNR) due to her income being treated as Indiana source income when in fact it was Florida source income." The letter further states that "a copy of her W-2, 1099's, driver's license, and a copy of her federal tax return page 1 . . . showing her address in Florida" was being provided to the Department. Furthermore, the accountant states that Taxpayer's "W-2 income was solely from stock options; she did not work in Indiana at all during tax year 2016."

With that in mind, we now turn to the relevant law. Pursuant to IC § 6-3-1-12, a resident is defined as follows:

The term "resident" includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state, or (c) any estate of a deceased person defined in (a) or (b), or (d) any trust which has a situs within this state. (Emphasis added).

In other words, "a resident" includes individuals who are domiciled in Indiana and/or maintain a permanent place of residence in Indiana and then spend more than 183 days in Indiana. In this case, Taxpayer in effect is arguing that she did not spend more than 183 days in Indiana during 2016. Therefore, in order to be considered a resident of Indiana during 2016, Taxpayer must have been domiciled here.

Domicile is defined by [45 IAC 3.1-1-22](#), which states:

"Domicile" Defined. For the purposes of this Act, a person has only one domicile at a given time even though

that person maintains more than one residence at that time. Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur.

In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a home at that place. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.

The determination of a person's intent in relocating is necessarily a subjective determination. **There is no one set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the facts present in each individual case.** Relevant facts in determining whether a new domicile has been established include, but are not limited to:

- (1) Purchasing or renting residential property
 - (2) Registering to vote
 - (3) Seeking elective office
 - (4) Filing a resident state income tax return or complying with the homestead laws of a state
 - (5) Receiving public assistance
 - (6) Titling and registering a motor vehicle
 - (7) Preparing a new last will and testament which includes the state of domicile.
- (Emphasis added).**

Thus, a new domicile is not necessarily created when an individual moves to an address outside Indiana. Instead, the individual must move to the new non-Indiana address and have intent to remain at that non-Indiana address.

The Indiana Supreme Court considered the issue of the meaning of "domicile" in *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), in which the court provided:

Domicile means "the place where a person has his true, fixed, permanent home and principal establishment, and to which place he has, whenever he is absent, the intention of returning." *Turner*, 241 Ind. at 80, 168 N.E.2d at 196. Domicile can be established in one of three ways: "domicile of origin or birth, domicile by choice, and domicile by operation of law." *Croop*, 199 Ind. at 271, 157 N.E. at 278. The domicile of an unemancipated minor is determined by the domicile of his parents. *Hiestand v. Kuns* (1847), 8 Blackf. 345.

Once acquired, domicile is presumed to continue because "every man has a residence somewhere, and ... he does not lose the one until he has gained one in another place." *Scott*, 171 Ind. at 361, 86 N.E. at 413.

Establishing a new residence or domicile terminates the former domicile. A change of domicile requires an actual moving with an intent to go to a given place and remain there. "It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact.... **[T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile.**" *Rogers*, 226 Ind. at 35-36, 77 N.E.2d at 595-96. *Id.* at 1317. **(Emphasis added).**

Therefore, an examination of Taxpayer's acts is required to determine if Taxpayer had the intention to acquire a new domicile outside of Indiana and to abandon her domicile in Indiana.

The applicable law for "homestead" is found at IC § 6-1.1-12-37(a)(2), which states in relevant part:

"Homestead" means an individual's principal place of residence:

(A) that is located in Indiana;

(B) that:

(i) the individual owns;

(ii) the individual is buying under a contract; recorded in the county recorder's office, that provides that the individual is to pay the property taxes on the residence;

(iii) the individual is entitled to occupy as a tenant-stockholder (as defined in 26 U.S.C. 216) of a cooperative housing corporation (as defined in 26 U.S.C. 216); or

(iv) is a residence described in section 17.9 of this chapter that is owned by a trust if the individual is an individual described in section 17.9 of this chapter; and

(C) that consists of a dwelling and the real estate, not exceeding one (1) acre, that immediately surrounds that dwelling.

Except as provided in subsection (k), the term does not include property owned by a corporation, partnership,

limited liability company, or other entity not described in this subdivision.
(**Emphasis added**).

Additionally, when a taxpayer claims the homestead exemption, the dwelling has to be their principal place of residence, as provided by IC § 6-1.1-12-37(a)(2). [50 IAC 24-2-5](#) defines that as:

"Principal place of residence" means an individual's true, fixed, permanent home to which the individual has the intention of returning after an absence.

And, as the court in *Bayh* explained, "A change of domicile requires an actual moving with an intent to go to a given place and remain there." *Bayh* at 596. The *Bayh* case shows that to change one's domicile there must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish the change of domicile.

Taxpayer, in correspondence, states:

A notice was received for both 2015 and 2016 taxing all of the income to Indiana even though residency was changed to Florida in November, 2015 as shown on enclosed drivers license. Voter registration and homestead were also changed to Florida. Change of address was only filed recently on some income payers due to the fact that these payments are all directly deposited: [Company C] (reported as wages but actually stock options that were exercised after retirement), [Insurance company] (pension income from deceased spouse), and Social Security. Upon receipt of the initial notice, changes were disputed and IDOR insisted that they needed a "Letter from employer" stating that they had made an error in reporting the income to Indiana. No statute, regulation, or case law has been cited indicating that a taxpayer must provide such a letter after producing documented proof of the change in residency. [Company C] and [Insurance Company] are refusing to say the error was on their part since it was simply a matter of the taxpayer being unaware that this change needed to be submitted.

The Indiana Tax Court in *Schmidt v. Indiana Dept. of State Revenue*, 81 N.E.3d 705 (Ind. Tax Ct. 2017)—a case involving Indiana residents that moved to Florida—noted the evidence that the Schmidts provided to establish that they abandoned their Indiana domicile and acquired a new domicile in Florida:

Here, the Schmidts presented un rebutted testimony that they intended to abandon their Indiana domicile and acquire a new domicile in Florida. (See Trial Tr. at 59, 96.) Moreover, they provided evidence that they undertook acts in furtherance of their intent: (1) they purchased a residence in Florida, (2) they registered to vote in Florida, (3) they applied for and received a homestead credit on their Florida residence, and (4) they titled and registered vehicles in Florida. In addition, they ultimately sold the house in Carmel; they voted in Florida; and they surrendered their Indiana driver's licenses. All of these facts are expressly relevant to determine whether a new domicile had been established under the Department's regulation. See 45 I.A.C. 3.1-1-22.

The Department's regulation also expressly stated that it did not provide an exclusive listing of all the relevant factors to be considered. Thus, other relevant factors supporting the Schmidt's intention to change their domicile include testimony that they had always wanted to move to Florida, performance of core president duties from a Florida home office, relocation of all their most important possessions to Florida, and membership in a Florida country club. Moreover, Mr. Schmidt specifically testified that he had no intention during 2008 to 2015 to return to Indiana to live.

Id. at 710. The facts of the *Schmidt* case are distinguishable from the facts developed by Taxpayer in her protest. The Schmidt's "provided evidence" of their intent to abandon their Indiana domicile and establish a Florida domicile—evidence such as the purchase of a Florida home and receiving a Florida homestead credit, registering to vote in Florida, titling and registering their vehicles in Florida, etc. In the case at hand, Taxpayer merely *states*, without actually establishing via documentary evidence, that her "[v]oter registration and homestead were . . . changed to Florida." Taxpayer did not provide the Department's Legal Division with any *documentation* that relates to the criteria found at [45 IAC 3.1-1-22](#) (*viz.*, Purchasing or renting residential property; Registering to vote; Seeking elective office; Filing a resident state income tax return or complying with the homestead laws of a state; Receiving public assistance; Titling and registering a motor vehicle; Preparing a new last will and testament which includes the state of domicile). If Taxpayer purchased a Florida residence, she did not provide any documentation to establish that in her protest; likewise, if she took the Florida homestead, no proof of that was provided. And lastly, she did not provide any proof that she registered to vote in Florida. As for the evidence Taxpayer did provide, her 2016 federal income tax return does list Florida as her address and her Florida driver's

license does show that it was issued in November 2015. But these two items do not suffice to establish that Taxpayer abandoned her Indiana domicile and acquired a new domicile in Florida.

FINDING

Taxpayer's refund claim is denied.

August 10, 2018

Posted: 10/31/2018 by Legislative Services Agency
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